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8748REMARKS

Claim 13 has been cancelled. Claims 17, 18, 24 and 25 have been rewritten in independent form to include the limitations of the basic claim and any intervening claims. These amendments raise no new issues, and Applicant requests entry of this amendment.

Claims 13, 15 and 19-23 stand rejected under 35 USC 102(b) as being anticipated by Boah. Claim 13 has been cancelled, overcoming the Examiner's rejection. Claims 15 and 19-23 have been amended to depend on claim 24.

Claims 17 and 18 stand rejected under 35 USC 103(a) as being obvious over Boah in view of Ehrig. The Examiner admits that Boah does not teach mixing a tackifier or a maelate with a polyolefin as claimed. The Examiner states that it would be obvious to mix a tackifier or a maelate with the coating of Boah because of Ehrig, and the claimed invention is obvious. Applicant respectfully disagrees. There is suggestion or motivation to mix a tackifier or a maelate with the coating of Boah. Nothing in Boah teaches that the coating is deficient in any way or in need of a tackifier or maelate. Therefore, claims 17 and 18 are not obvious in view of Boah and Ehrig under 35 USC 103(c). Applicant respectfully request that the rejection be withdrawn.

Claims 24 and 25 stand rejected under 35 USC 102(b) as being anticipated by Boah or alternately under 35 USC 103(a) as being obvious over Boah. The claimed invention is not anticipated by Boah. The Examiner admits in the Office Action that Boah does not disclose a film made of polyethylene, polybutylene terephthalate or polyethylene terephthalate. Therefore, Boah does not disclose that claimed invention. Applicant respectfully requests that the rejection be withdrawn.

Additionally, the claimed invention is not obvious in view of Boah. The Examiner states that it is well known in the art that more than one material is capable of being used to prevent a metal surface from corrosion. The Examiner states that the anti-corrosion effect of the heat exchanger surface is equally achieved with the use of other anti-corrosion materials. The Examiner also states that it is within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. This is clearly a use of hindsight reconstruction. It is impermissible to engage in hindsight reconstruction of the claimed invention, using the appellant's structure as a template and selecting elements from the references to fill the gaps. The references themselves must provide some teaching whereby the appellant's combination would have been obvious. In re Gorman, 933 F.2d

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982, 986, 18USPO2d 1885, 1888 (Fed. Cir. 1991). There simply is no suggestion in the references, or in the prior art as a whole, that suggests the desirability of using these materials.

Additionally, the Examiner supplies no evidence of these assertions. Applicant cannot respond without the evidence, and thus ask that holding be dropped or evidence supplied. Notably, the relevant question is not whether polyethylene, polybutylene terephthalate or polyethylene terephthalate has ever been used anywhere. Instead, the question is whether it would have been obvious to employ these materials in the claimed environment. Clearly, it would not have been.

The Examiner seeks to modify the heat exchanger of Boah to include a layer of a polyethylene, polybutylene terephthalate or polyethylene terephthalate. First, assuming the examiner is arguing that the heat exchanger of Boah is modified to include a layer of a polyethylene, polybutylene terephthalate or polyethylene terephthalate, there is no reason to modify Boah to include a layer of these materials. Boah already has a layer of polyolefin, such as polypropylene. There is no reason or motivation to also add a layer of polyethylene, polybutylene terephthalate or polyethylene to the layer of polyolefin. There is no reason to use two layers, and it would add additional expense.

If, on the other hand, the examiner is arguing that the polypropylene layer of Boah is modified and replaced with a layer of polyethylene, polybutylene terephthalate or polyethylene terephthalate, there also is no suggestion to make this modification. It is impermissible to modify a base reference in a manner that defeats the benefits achieved by the teachings of the reference. Boah teaches the use of a polypropylene layer. To eliminate the polypropylene layer and replace it with a layer of polyethylene, polybutylene terephthalate or polyethylene terephthalate would defeat the benefits achieved by Boah. There is no support that using a layer of polyethylene, polybutylene terephthalate or polyethylene terephthalate would satisfy all of the problems solved by using the polypropylene layer of Boah or that a layer of polyethylene, polybutylene terephthalate or polyethylene terephthalate performs in any way better than the structure already provided by Boah.

Nothing in Boah would have led one of ordinary skill in the art to believe that Boah's polypropylene layer was in any way deficient for Boah's purposes or was in need of modification. One of ordinary skill in the art would have found no reason, suggestion, or incentive for modifying the heat exchanger of Boah other than through the luxury of hindsight accorded one

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who first viewed Applicant's disclosure. This is not a proper basis for a rejection under 35 U.S.C. 103. The claimed invention is not obvious, and Applicant requests that the rejection be withdrawn.

Thus, claims 15 and 17-25 are in condition for allowance. The Commissioner is authorized to charge Deposit Account No. 03-0835, in the name of Carrier Corporation, for \$88.00 for one additional independent claims. If any additional fees are due, however, the Commissioner is authorized to charge Deposit Account No. 50-1482, in the name of Carlson, Gaskey & Olds, P.C., for any additional fees or credit the account for any overpayment. Therefore, favorable reconsideration and allowance of this application is respectfully requested.

Respectfully Submitted,
CARLSON, GASKEY & OLDS, P.C.

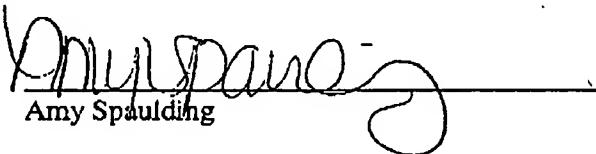


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Amy Spaulding